gated to courts or judges, even with lawyers added to the rule committees, but the judgment and experience of the judges, with or without the aid of practicing members of the bar, must be utilized under the executive leadership of one who performs no judicial duties himself, but is freely subject to political attack and criticism, and is obliged to justify his stewardship of the office. Such an official would feel the need of public opinion to support his measures, and he would use every effort to create such an opinion and to make it intelligent. Our absurd habit of ignoring the work of the courts in our public documents, and preparing and publishing no data relating to the administrative side of the judicial establishment, would be abandoned as soon as somebody in authority found it advantageous to publish such statistics. At present nobody knows anything definite about the working of the courts, and proposals for improvements rest upon the vaguest guesswork,—personal experiences and the random opinions of lawyers, judges and occasional laymen. Governmental progress can be based only upon the recorded experience of the past, and it is utterly irrational to expect a scientific development of procedure with no procedural records to build upon. With the administration of justice brought out into the light as a subject of popular interest and political criticism, under the guidance and responsibility of a public officer whose political success would be measured by the degree in which he could utilize the best judicial and professional opinion as to improvements in legal practice and bring to the attention of the public the need for reform and the results accomplished by his efforts, it would no longer be possible for Elihu Root to say to the American Bar Association, without fear of contradiction, that "there is no country in the world in which the doing of justice is burdened by such heavy overhead charges or in which so great a force is maintained for a given amount of litigation."[42]

[42] 41 Am. Bar. Ass'n. Rep. (1916) 358.

usually classed as humanitarian, that is involved in this discussion. The definition of humanitarian intervention and its content has not been attempted until recently, although many publicists have written extensively on interventions in the name of humanity. The term humanitarian intervention was first used by Hall,[11] a noted British publicist, and has been best defined by Professor Stowell as "the reliance upon force for the justifiable purpose of protecting the inhabitants of another state from treatment which is so arbitrary and persistently abusive as to exceed the limits of that authority within which the sovereign is presumed to act with reason and justice."[12] This definition itself bristles with controversial points *ab initio* and leads necessarily to a discussion of the theories on which humanitarian intervention has been founded.

The idea of intervention of states for the purpose of ameliorating conditions which were revolting and which called for redress is not new, and the attempt to invoke a legal right justifying such action has long been the chief concern of the advocates of humanitarian intervention. In consequence the theory of humanitarian intervention has been based, from time to time, on different principles, different theories, different political and legal philosophies, according to the time in which the writers lived and the circumstances amid which they wrote. The earliest school of writers, peculiarly enough, based their views on the idea of the solidarity of Christendom and the need of upholding the believers. Such, for example, was the viewpoint expressed in the last quarter of the sixteenth century by the author of the *Vindicae Contra Tyrannes*[13] who wrote in the midst of the sanguinary religious wars raging in France. Such a view gives expression to the mediæval idea of the solidarity of Christendom and the moral necessity of aiding both the faithful and those oppressed by tyrants. Half a century later Grotius, appealing to the Law of Nature and of Right Reason, asserts the right of intervention against

justice of international intervention. The decision as to the justice of the grounds of intervention or non-intervention in any particular instance must in a democracy be determined by the prevailing opinion of its citizens. Each citizen, therefore, bears his part of this supreme responsibility."

[11]Hall, William E., INTERNATIONAL LAW, 4th ed., 1895, p. 304, cited by Stowell, *op. cit.*, p. 51.

[12]Stowell, *op. cit.*, p. 53.

[13]*Ibid,* p. 55, citing Dunning, William A., POLITICAL THEORIES FROM LUTHER TO MONTESQUIEU, p. 55.

tyrants practicing atrocities against their subjects, which no just man could approve, and holds that "these oppressed subjects are not cut off from the protection of the laws of human society."[14] The sense of solidarity of human being is still there, but now, under the Grotian school, the purely moral obligation incumbent upon Christendom is transformed into a much more general one based on the Law of Nature. There is a new sovereign now, not the Pope, but the Law of Nature, whose dictates are binding on all states, great and small, with inexorable and inescapable force. There being no common physical superior, each state is allowed to execute the precepts of that imprescriptible law at its own discretion and by the means at its disposal. Yet with it all, the arguments of Grotius, Vattel, Pufendorf and Bacon[15] are vague and hardly capable of specific definition, owing to the character of the law they invoke. In brief, the doctrine of humanitarian intervention advanced in the sixteenth and seventeenth centuries rested, in the main, on the basis of the Law of Nature, and presumed, indeed assumed, the compliance of states with its dictates.

There next arises the school of international lawyers much influenced by the prevailing ideas of the absolute territorial supremacy of a sovereign and the absolute independence of states. Defended in the beginning by the supporters of absolute monarchy,[16] this school, under the mollifying, liberalizing influence of the *laissez-faire* philosophy of the nineteenth century, such as is represented in the writings of Mill, still clings to the idea of illimitable independence while bolstering the shattered pillars of personal government, of dynastic authority, by a new doctrine born of rampant individualism, the doctrine of the absolute equality of states. Such a doctrine is best supported by the theory and practice of non-intervention, which is carried to unconscionable extremes by the utilitarian philosophers and

[14]Grotius, Hugo, De Jure Belli et Pacis, Book II, Chapter XXV, Sec. 8, cited by Rougier, Antoine, Revue Generale de Droit International Public, Vol. 17, (1910) p. 490, n. 1.

[15]Vattel, Emmerich de, Le Droit de Gens, Liv. II, Ch. V, Sec. 70 instanced by Rougier, *loc. cit.*

[16]Such as Vattel, despite his admission above cited. This attitude, for whose promulgation Vattel (along with Hübner and Lampredi) has been held largely responsible is scathingly denounced and condemned in the work of Cornelius Van Vollenhoven, of the University of Leyden, in his valuable essay on The Three Stages in the Evolution of the Law of Nations, 1919, pp. 22 ff. as productive of the moral anarchy among states characterizing this second stage of the development of international law.

statesmen of the nineteenth century.[17] If deplorable conditions in industry resulted from the application of *laissez-faire,* and Mrs. Browning's "Cry of the Children" was silenced by the doctrines of economic individualism, so in the international sphere Armenian or Bulgarian atrocities failed to move either a Disraeli[18] or a Hamilton Fish. In the end, the economic doctrines and the individualistic philosophy supporting the theory of international *laissez-faire* and the unrestricted independence of states pass away, but the more conservative publicists[19] still cling, blindly, to the doctrine of the infrangible sovereignty of even a backward state over its nationals, and lose sight of the wider humanitarian interests at stake, which either arrogant nationalism[20] or smug self-satisfaction[21] efface. If the Natural Law-

[17]Cf. Mill, John Stuart, "A Few Words on Non-Intervention" in Dissertations and Discussions, Vol. III, pp. 153-178, cited by Stowell, *op. cit.,* p. 514. Also Woolsey, Theodore Dwight, International Law, 5th Ed., 1878, Sec. 20 b, cited by Stowell, *op. cit.,* p. 48, n. "The prevalent view seems to have been that outside of its own territory, including its ships on the high seas, and beyond its own relations with other states, a state has nothing to do with the interests of justice in the world. * * * When a nation commits a gross crime against another, third parties are not generally held to be bound to interfere. This is the most received, and may be called the narrow and selfish view."

[18]Stowell, *op. cit.,* pp. 128, 130.

[19]Cf. the statement of the renowned Dutch jurist, De Louter, in his Le Droit International Public Positif, 2nd Ed., 1919, p. 258: "The best authors reject the right of intervention because of cruelties, of defective government or of civil war in a sovereign state—a thing which on the contrary some writers think they ought to defend. Alluding to public opinion, easily inflammable, an English author (Hall) says of this doctrine that it is as dangerous in reality as it is acceptable in appearance. In effect, little thought is required to understand that it strikes at the very roots of international law and menaces directly the independence of small states."

[20]Such is the view of the Italian school of publicists, "a school born in Italy following the reaction against the political excesses of the Holy Alliance, (which) has raised to the height of a fundamental and absolute principle of the law of nations the idea that states are independent, in order to deduce as a corollary the so-called rule of non-intervention." (Rougier, *op. cit.,* p. 480.) "From this principle it suffices to draw the logical consequences to show that humanitarian intervention would be a derogation of the rule impossible to justify. Thus all the partizans of the absolute independence of states reject it." (*Ibid,* p. 481) The founder of the school was Mamiani, whose brilliant disciples have been Carnazza Amari, Cimbali and others. Cf. Stowell, *op. cit.,* p. 510.

[21]McKinley, in his message of April 11, 1898, to Congress, put the matter

yers are dead and forgotten, and their doctrines of human solidarity are discarded by positive law, this school of non-interventionists continues to ratiocinate its obsolescent dogma in the face of international realities, in the face of an integrating international society.[22] It is their doctrine which has filled the gap between the submergence of the idea of human solidarity after the discrediting of the Law of Nature, and the resurgence of the idea with the reconstruction of international society.

The third school of writers, represented by Arntz,[23] Rolin-Jaequemyns,[24] Pillet,[25] and Rougier,[26] largely a Franco-Belgian school,

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pointedly by drawing attention to "the barbarities, bloodshed, starvation, and horrible miseries" in Cuba, "which the parties to the conflict are either unable or unwilling to stop or mitigate. *It is no answer to say this is all in another country, belonging to another nation, and is therefore none of our business. It is specially our duty, for it is right at our door.*" (Italics mine) Moore, *op. cit.*, Vol. VI, p. 219.

[22]Such is the view of Professor Hyde: "In a strict sense, the family of nations is interested in the affairs of each of its members. No event in the life of any one is wholly devoid of international significance. On the other hand, due respect for the political independence of states requires that within a broad field the affairs of a state which pertain to its internal management and control should be regarded as possessed of solely a domestic character. In the treatment of its own citizens a state enjoys the largest freedom. Its conduct in that respect may be cruel and may visibly shock the sensibilities of the outside world. Nevertheless, the law of nations does not, by reason thereof, stamp it as illegal and of a character to justify interference." Illinois L. Rev., Vol. VI, pp. 5-6.

[23]Arntz, Egide R. N., "a German publicist resident in Belgium" cited in a letter to Rolin-Jaequemyns, published in the Revue General de Droit International et de Legislation Comparee. Vol. VIII, 1876, p. 673, cited by Stowell, *op. cit.*, p. 53; by Snow, *op. cit.*, pp. 311-312, who says that "the proposition thus formulated by Arntz was but the summing up of the conclusions reached by the liberal publicists of the period, among the most brilliant of whom were Bluntschli in Germany, and Lorimer in Great Britain, who were themselves inspired by the humanitarian aspect impressed upon the Civil War in the United States by the genius of Lincoln"; and by Rougier, *op. cit.*, p. 491.

[24]Rolin-Jaequemyns, Gustave, "Note sur la theorie du droit d'intervention" in Revue du Droit International et de la Legislation Comparee, Vol. VIII, 1870, pp. 293-385.

[25]Pillet, in Revue de Droit International Public, Vol. 1, (1894), pp. 1 ff.; Vol. V. (1898) pp. 66, 236; Vol. VI, (1899), p. 503. Les Droits Fondamentaux des Etats.

[26]Rougier, Antoine, Professor of Law in the University of Cæn, "La Theorie de l'Intervention d'Humanite," Revue General du Droit Interna-

arises to challenge the inhumanities practiced in the name of the equality and the sovereignty of the Ottoman Empire and invokes at first a vaguely founded set of "Rights of Humanity" which the European Concert must needs vindicate in the Near East (1876-1877). Sensing the ties of social solidarity from a juristic standpoint, these neo-interventionists proclaim at large the doctrine of humanitarian intervention as inherent in the nature of international society, which must be founded on justice and order, which are the explicit evidences of this social law. Among French thinkers, such as Rougier, this is further supported by the invocation of the Rights of Man[27] to bolster up the humanitarian doctrine, which otherwise rests upon an extremely tenuous basis of objective law, primarily that of commercial agency.[28]

TIONAL PUBLIC, Vol. XVII, pp. 468-526. This is the most important study ever made of the theoretical bases of humanitarian intervention, although Rougier's work is somewhat motivated, as he wrote this in 1910, "when the question was raised whether France and Spain could legally intervene in the state of Morocco and convert it into an international or colonial protectorate of one or both of them under a 'Law of Humanity' superor in obligation to the international Act of Algeciras." (Snow, *op. cit.*, p. 313).

[27]"This Law of Humanity is not simply an ensemble of moral precepts imposed on the conscience of the individual, it is a necessary rule conditioning certain social relations of man, and consequently a legal rule. Just as every private society has its necessary laws, human society must have its own also." (490-491) "Human solidarity demands that all the activities which characterize man as a physical, moral and social being shall be protected: his life and his physical liberty, his moral liberty and his aptitude for social intercourse. The Law of Humanity ought therefore to guarantee to individuals the respect for life, material and moral liberty and finally the recognition of a 'legal order', a condition *sine qua non* in the life of society." This concept of a legal order means organized government, limited in its powers so as not arbitrarily to deprive the governed of their human rights. The Law of Humanity might be summarized in a triple formula—right to Life, right to Liberty, right to Legality." As thus given by Rougier these resemble very materially the terms of the Declaration of the Rights of Man and the Citizen. (Rougier, *op. cit.*, p. 494).

[28]Snow, *op. cit.*, pp. 334-335, criticizes Rougier's theory constructively, to make clear the legal concepts upon which it is based: "The supreme 'Law of Humanity' * * * was found to be so indefinite as to be dangerous. * * * To avoid this danger publicists sought to limit this 'higher law' by defining it as the 'law of human solidarity', thus applying the principles of the French law of partnership and association, whereby the partners or associates are regarded as mutual trustees and agents * * * and whereby the unit thus formed

In the Anglo-Saxon world such a doctrine has met with less acceptance inasmuch as the Rights of Man and the Citizen do not, as such, form part of our constitutional system, although in the Declaration of Independence and British Constitutional documents, human rights have always occupied a predominant place.[29] Stowell,[30] however, has been among the foremost in setting forth the doctrine of humanitarian intervention as "an instance of vindicating the law of nations against outrage", holding that "it is a basic principle of every human society and the law which governs it that no member may persist in conduct which is considered to violate the universally recognized principles of decency and humanity." This doctrine is based, not upon the idea of subjective human rights or upon the existence of any law of superior obligation to either national or international law but on the assumption that[31] "no state shall unreasonably insist upon its rights or pursue its interests to the detriment of the opposing rights and interests of other states" in general.[32]

It would appear that the fundamental error involved in all the theories laid down as to the rightfulness of humanitarian intervention is the deliberate or unwitting overlooking of the nature of the Society of States whose law is to be applied for the prevention of such international crimes against humanity. To the Natural Legists, their subjective law is mandatory upon each of the members of the family of

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is characterized as *solidaire* and the partners or associates are considered to exist, for the purposes of the partnership or association, in a relationship of *solidarite*. This definition of the supreme 'Law of Humanity' as the 'law of human solidarity' imported into the law of nations notions which were partly social and partly economic, but which were essentially those of commercial agency."

[29] Snow, *op. cit.*, pp. 317-319.

[30] *Op. cit.*, pp. 51-52.

[31] *Ibid*, p. vi. He adds: "Viewed in their proper prespective of subordination to this general rule, all the other just grounds of intervention can be discovered and defined so that all states of good-will may give heed to the law and cooperate to check the transgressions of the evil doer."

[32] A variant doctrine of intervention on general humanitarian grounds emanating from the Anglo-Saxon world is that advanced by Professor John Bassett Moore to the effect that certain international conditions become an international nuisance and may therefore be abated. This Stowell regards as not a happy designation, for its application, to Cuba, for example, does not accord with the facts revealed in our diplomatic correspondence of the period. Cf. Moore, J. B., Principles of American Diplomacy, 1918, p. 208 and Stowell, *op. cit.*, pp. 62 ff.

nations but there exists no method of stating that law, or insuring compliance therewith save by stringent measures of individual enforcement. To the Equalitarians there is no possibility of concerted action of equals against a fellow member of the international community, since it would deny the equality on which the very school stands. Indeed, it may well be said of the school of Equalitarians that their doctrines are singularly responsible for the international anarchy which has so long prevailed. Even to the most tolerant of these, Lawrence, humanitarian interventions, while apparently justifiable on moral grounds, violate the fundamental fabric of the law of nations and cannot be called legal.[33] To Rougier and the real humanitarians the action of a collectivity of states in support of this higher law of social solidarity amply justifies a disinterested intervention.[34] Yet the fundamental fact remains that the pre-war European Concert of Power, or the Continental Paramountcy of the United States in the new world were the only vehicles for the enforcement of a humanitarian intervention. There was still lacking a definitely coherent, organized Society of Nations capable of both formulation and enforcement of international law.[35] That is why the creation of the League of Nations has so fundamentally altered the question of humanitarian intervention, by providing for the collective action of the whole body of states in any matter which concerns the peace of that society at large,[36] and also in any matter within its sphere of action, particularly as regards inhumane treatment of backward peoples or revolting conditions of labor in any country. In brief, while hitherto collective interventions have tended to assume the form of actions

[33]Lawrence, T. J., THE PRINCIPLES OF INTERNATIONAL LAW, 4th ed., p. 129 cited by Stowell, *op. cit.*, p. 61, n.

[34]Rougier, *op. cit.*, pp. 499-500, *passim*: "Their number increases the authority of collective decisions and renders possible intervention against both strong and weak states. But their presence is above all a guarantee of the disinterested character of the intervention, a guarantee as precious for the honor of the supervisors as for the independence of the state supervised. From this double point of view collective intervention seems particularly likely to lead to happy results and the chances are increased by reason of the moral and material authority of the powers constituting the Concert." On the other hand Hyde (6 ILL. L. REV., p. 9) denies legality of any such action.

[35]*Ibid.*, pp. 499, 503-4.

[36]League of Nations Covenant, Article XI, Sec. 2. Also Art. III, Sec. 3, Art. IV, Sec. 4. Arts. XXII, XXIII and Part XIII of the Treaty of Versailles, preamble, and Arts. 411 ff., especially Arts. 419 and 427.

taken by a self-appointed committee of the family of states in the interest of all members of that family, the creation of an organized Society of Nations has given the sanction of social solidarity, on an objective basis, to the hitherto purely sporadic, isolated acts of altruistic nations acting as enforcers of the law of nations.[37]

What, then, has been the change involved, as concerns the doctrine of humanitarian intervention? It would appear that the net effect of the war and the subsequent organization of a Society of Nations on the international law of peace has been first, a reduction of unlimited national sovereignty in the case of all members of the League by a limitation of the war-making power, thus doing away with the fetish of absolute independence so devoutly worshipped by the followers of the doctrine of non-intervention, and second, the legal recognition of the inequality of states, as manifested by the preponderance given to the Great Powers in the Council of the League, and third, the acknowledging of the need of international supervision of backward countries, for which the mandatory system was devised. This latter fact is accompanied by the acknowledgement of "the principle that the well-being and development of such peoples form a sacred trust of civilization" and that securities for its performance may be effected by entrusting the tutelage of such peoples to advanced nations, as Mandatories of the League.[38] There exists now, therefore, not a subjective Law of Nature nor a sentimental Law of Humanity to sanction interventions of a humanitarian

[37]Cf. Hyde, C. C., INTERNATIONAL LAW, Vol. I, p. 118; "It is the mode of collective interference, through an established agency, as well as the recognition of circumstances when such action is excusable, which characterize the existing tendency and afford hope of the development of a sounder practice than has hitherto prevailed". But compare his view, cited in Note 34 (1912) that "On principle a group of states acting in concert has no greater right of intervention than that possessed by a single state. The internationally illegal character of the conduct sought to be thwarted is not derived from the mere concert of opposing nations. Clean motives may inspire their action. Their very power may silence protests and insure the success of their operations. Unless, however, the group of intervening states includes practically all of the members of the family of nations, so as to become capable of establishing rules of conduct to be observed by each, and of rendering illegal the commission of acts previously regarded otherwise, it cannot, by means of its own united policy and will, find new grounds to justify interference with the political independence of a sovereign state."

[38]Covenant of the League of Nations, Art. XXII, Sec. 2.

character, but a substantive Law of Nations defining the right of humanitarian intervention in a new light.[39]

In pre-war days the right of humanitarian intervention, when acknowledged, was considerably restricted in its application. While some publicists admitted the right,[40] without always stating the grounds on which it rested, they were extremely vague in their ideas of its content, and actually the doctrine was supported by very few instances of actual armed intervention going beyond mere intercession or interposition.[41] Perhaps the most notable instances of the last century have been the Allied intervention in Greece in 1826,[42] the French intervention in Syria in 1860,[43] and the American intervention in Cuba in 1898.[44] Certainly in these instances the humanitarian motive was foremost. In all these cases there was a crying evil to be redressed and humanitarian intervention for the purpose of ending oppression or religious persecution was effective. It was questioned before the War whether a more extensive application of humanitarian intervention than for the reasons above given was justifiable. Thus, says Rougier[45] "It would therefore be premature and doubtless illusory in the present state of the science (of international law) to attempt to outline precisely what inhumane acts may legitimate foreign control. The uncertain content of the idea of humanity and the variable extent of international control founded on it would render arbi-

[39]This conventional law may be found in the Covenant, and in the text of the draft mandates as approved by the League Council, and numerous minor acts of the League such as those in behalf of refugees, typhus victims, etc. For these the reader is referred to the OFFICIAL JOURNAL OF THE LEAGUE OF NATIONS.

[40]The list of the authorities who recognize the legality of humanitarian intervention includes Grotius, Wheaton, Heiberg, Woolsey, Bluntschli, Karl von Rotteck, Heffter, Arntz, Rolin-Jaequemyns, Creasy, Hall, Amos, Lingelbach, Pillet, Rivier, Kebedgy, Rougier and Hodges, to which may be added Davis, Borchard and Stowell.

[41]i. e., so-called "diplomatic intervention" Stowell, *op. cit.*, p. 2.

[42]*Ibid*, p. 127, citing Strauch, INTERVENTIONSLEHRE, p. 277, Oppenheim, INTERNATIONAL LAW, Vol. I, page 194; Creasy, FIRST PLATFORM OF INTERNATIONAL LAW, pp. 300-301; Stapleton, A. G., INTERVENTION, p. 32, also Rougier, *loc. cit*, p. 473, n.

[43]Rougier, *loc. cit.*, p. 474, citing de Martens, G. F., NOUVEAU RECUEIL GENERAL DE TRAITES, tome XVI, 2e partie, p. 638, also Stowell, *op. cit.*, p. 66, who cites numerous authorities.

[44]Moore, DIGEST, Vol. VI, Secs. 909-910, for full documentation.

[45]Rougier, *loc. cit.*, p. 512.

trary any such attempt at regulation, which can only be the work of the future." A closer analysis of the grounds on which humanitarian intervention has either been based or projected enables Stowell, writing after the war, to regard it as justified when undertaken to end persecution,[46] oppression,[47] uncivilized warfare,[48] injustice,[49] or the

[46]Stowell, *op. cit.*, pp. 63-85, citing American protests against persecutions of Jews in Rumania (1872, 1902) and Russia, (1880, 1882, 1891, 1903, 1911) and of Armenians in Turkey (1915) in which latter instance Mr. Morgenthau the American Ambassador, was instructed to point out to the Ottoman Government "that the American people are already so stirred by the reported massacres that a continuance of the atrocities might result in a break in the friendly relations between the two peoples" (cited from N. Y. Evening Post, October 5, 1915, by Stowell, pp. 81-2).

[47]*Ibid.*, pp. 86-125, citing the American attitude toward the coercion of Ireland, (1848, 1919) and the European attitude toward Poland (1863).

[48]*Ibid.*, pp. 125-139, citing examples of Greece (1827), Bulgarian atrocities (1876-1877), and American protests in the Nicaraguan revolution of 1893. Of peculiar interest is the "humanitarian expedition" sent by Sweden to the Aaland Islands in February, 1918, to end the uncivilized warfare between Red and White Guards. The action of the Swedish government seems in every way to have been humanitarian. Cf. New York Times, February, 1918.

[49]*Ibid.*, pp. 139-195. "Injustice" is a term with a very wide connotation. It is here applied particularly to the Kongo and Putumayo rubber districts, in which cases the United States and Great Britain assumed the initiative in attempting to remedy the intolerable conditions under which human beings were being kept and to which they were subjected involuntarily. The attitude of the United States toward the Kongo is made clear in a despatch of Secretary Root to Charge Carter at London, December 10, 1906: "* * * you will further express to Sir Edward Grey the desire of the President to contribute by such *action* and attitude as may properly be within his power toward the realization of whatever reforms may be *counseled by the sentiments of humanity* and by the experience developed by the present and past workings of Kongo administration. (Foreign Relations, 1907, Part II, p. 793, cited by Stowell, p. 169). The attitude is further developed in a report from Minister Wilson at Brussels: "Our interest in the Kongo question being *purely humanitarian in character,* we have been concerned only in the abolition of the regime which is held to be responsible for conditions repugnant to civilization and to the *humanitarian* spirit of the age, and in the substitution therefor of a constitutional government to be interpreted and executed in a spirit of benevolence and *humanity*". (Foreign Relations, 1908, pp. 549-550, cited by Stowell, p. 179). The italics are mine, in these citations. The situation in the Putumayo is made clear in the following despatch to Consul Fuller at Iquitos, Peru, April 6, 1912: "The Department, to which the cause of the defenseless natives of the Putumayo had so strongly appealed *for humanitarian reasons* * * * received information from time to time of the views of the British Government in the

slave trade.[50] The doubtful cases of temporary action by way of humanitarian asylum to political or other refugees[51]—so recently illustrated by the work of American naval detachments at Smyrna—and action to enforce compliance with humanitarian standards in shipping regulations[52] would seem to be warranted international action exerted in behalf of classes of individuals otherwise denied the most elementary protection.

This is the category of circumstances legitimating humanitarian intervention which Stowell discovers on the morrow of the Great War. His treatise illustrates aptly the wide connotation and extension given to the concept of humanitarian intervention by the general changes resulting from the war, quite apart from the League. The list of causes for humanitarian intervention is likely to increase continually, not merely on general principles, but on the basis of conventional international law governing such matters of international concern as the prevention and control of disease,[53] the reduction of the opium traffic,[54] and the mitigation of suffering throughout the world.[55] The efforts of the League of Nations in this respect are

matter and in regard to the steps which the British Minister at Lima had been instructed to take." (FOREIGN RELATIONS, 1913, p. 1244). Our Consul was ordered to make a thoroughgoing investigation in conjunction with the British Consul, but ultimately, in February, 1913, "the Department of State * * * was unwilling to cooperate with Great Britain in undertaking a humanitarian intervention which would have had a salutary effect upon Peru and other countries, which, in violation of international law, condone and protect the perpetrators of atrocities upon defenseless aborigines." (Stowell, *op. cit.*, pp. 182, 195). It would appear that difficulties between the United States and Great Britain in regard to Mexico were the basic cause for no cooperation in this matter.

[50]Stowell, *op. cit.*, pp. 195-205. The United States, in its action on conditions in the Kongo also based its claims on Articles 2 and 5 of the General African Slave-Trade Act of Brussels of July 2, 1890, to which the United States is a party. (FOREIGN RELATIONS, 1907, Part II, p. 793, cited by Stowell, p. 169).

[51]*Ibid.*, pp. 205-257.

[52]*Ibid.*, pp. 257-277. Stowell admits, however, that the question is new and that the limits of the conflicting rights have not as yet been described.

[53]Covenant of the League of Nations, Art. 23, (f), Art. 25.

[54]This has been done through the cooperation of the Netherlands government which has permitted the League to assume this work formerly under its protection, under the provisions of Art. 24, Sec. I of the Covenant.

[55]Largely through the work of the League of Red Cross Societies linked up with the League by Article 25 of the Covenant.

already noteworthy, as instanced by its work in typhus-stricken Europe, and are but a beginning toward the realization of improvements in the life of mankind, not merely from a political but from a sociological standpoint. Other nations have cooperated in this enterprise and will probably continue to do so.[56] This raises the fundamental question as to the agencies to be chosen to make humanitarian interventions a success.

In the days before such sanction as now exists in virtue of conventional international law was given to humanitarian intervention, that intervention took place as the result of either single-handed or collective action, according to the power or powers involved. Thus of the three outstanding instances already cited, two, that of France in Syria and that of the United States in Cuba, were undertaken single-handedly, not, however, without the tacit approbation of one or more of the other Great Powers. In the case of France, the European Concert regarded her as executing the mandate of all Europe,[57] and France has been referred to as "the mandatory of the European powers" in this connection. It is certain, too, that Great Britain, at least, regarded the action of the United States toward Cuba in 1898 in a similar light, although that attitude was not shared by the rest of Europe. The idea of a collective mandate of civilization to one or more of the Great Powers was further sanctioned by the Algeciras Conference called in 1906 to regulate the affairs of Morocco. It is interesting that the use of the very word "mandate" with the additional sense of responsibility for territorial administration was here inaugurated.[58]

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[56]Cf. the action of the 67th Congress in its closing session, which passed the Porter Resolution requesting the President of the United States to call an international conference and take the requisite steps to put down the opium traffic. It was alleged that the action of the League was legally circumscribed, hence the probability of active cooperation, or actual broadening of the powers both of the United States and the League of Nations could not help but strengthen such truly humanitarian activities. President Harding forthwith commissioned General Rupert Blue to make an exhaustive inquiry.

[57]Stowell, *op. cit.*, p. 311. In a note Stowell cites Kebedgy as drawing "a distinction between action as a mandatory and the ordinary intervention of a single state. A power acting in the capacity of a mandatory—that is, as the delegate of the powers is, he says, permitted to act 'only with the consent of the others and within the limits of the authorization.' " (Kebedgy, INTERVENTION, p. 82).

[58]Potter, Pitman B., "Origin of the System of Mandates under the League of Nations." AMER. POL. SCI. REV., Vol. XVI, pp. 563-583, esp. 579-580.

Here must be faced the inevitable problem resulting from humanitarian intervention in the armed sense, entailing the occupation of a given territory for an indefinite period. Stowell has summarized the dilemma of the intervener as making it "necessary either to assume the burden of the administration of the territory, or to constrain the unworthy sovereign to mend his ways." Manifestly if the offense causing intervention—whether this be collective or individual does not here matter—is a continuing one[59] a mere sporadic intervention without permanent results is not remedial in character and leads nowhere, while intervention of a more permanent character resulting in protracted occupation of a territory necessarily involves the problem of territorial administration. It is this fact which carries into completion the concept of territorial administration involved in the League mandate system, although it is unfortunate that the League Covenant has not more clearly provided for an extension of the system under such circumstances. It is almost inescapable that if the United States had undertaken a humanitarian intervention in Armenia in 1915-1916 such as it did in Cuba in 1898 such action would have led ultimately to the establishment of something like a type. A mandate over that country, regardless of the existence or non-existence of the League itself. It would appear, however, that in future such isolated interventions without an express mandate from the collective Society of Nations are hardly likely to occur. Rather will they occur as the express result of the action of the League[60] in selecting the appropriate country to act as its mandatory, its agent, in enforcing the terms of the mandate given for the purpose of removing unfortunate conditions violative of the most elementary human rights. It does not seem likely that collective interventions will frequently occur, as such, in view of the difficulty of rapid mobilization of the requisite forces, and of the possibilities of friction illustrated only too frequently in certain of the inter-allied expeditions of a minor character during the late war. But as a principle of inter-

[59]This is the basis for the doctrine of international nuisance. Note 32, *supra*.

[60]A recent illustration of League action is the so-called "mandate" given to Poland by the League to take possession of one-half the neutral zone around Wilno. "Poland carried out the mandate to take possession of that part of the Neutral Zone exclusively with the aid of police and two battalions of customs guards." (Statement of Prime Minister Sikorski, in Weekly News Release of Polish Bureau of Information, Vol. 4, No. 7, February 28, 1923.)

national law, it may safely be assumed that in future, while it will be altogether fitting and proper for the organs of the Society of Nations to confer authority, it will be left to some individual power to execute the mandate thus given, in the interests of expedition, harmony and simplicity. It is also possible that there will come about as a result of the mandatory system an application of the theory of reversionary sovereignty[61] which will vest the sovereignty of the territory occupied by some power under a humanitarian mandate in the Society of Nations itself, rather than in any member thereof. Under those circumstances, as regards backward countries, at least, exercise of the powers of sovereignty by mandatories of the League, like the exercise of the powers of rendering justice in the federal courts, by appointed judges, will be sanctioned only during good behavior.

What of the policy of the United States in relation to all this? It seems indisputable that, despite its cherished doctrine of isolation invoked on auspicious occasions, the United States has fully sanctioned by its practice the idea of humanitarian intervention, whether in Cuba, in the Putumayo district, at Smyrna or at Guayaquil. In all these cases it has acted of its own accord and with no other mandate than its own fiat. Whether it will continue to play the lone hand in the redressing of human grievances it is impossible to predict. It may be said, however, that the moral authority of a power acting single-handed when there exists a fully organized Society of Nations will be materially diminished, and that it will be compelled to act solely in reliance upon the more vague and general principles of international law, rather than in conformity with the gradually evolving social law of the Society of Nations. Should the United States enter the League, either in the near or the distant future, there would then be no question of its ability to participate more effectively in the humanitarian interventions sanctioned and sponsored by the League, wherever those might extend. Yet it is not to be forgotten that the United States would, under the circumstances, find itself, more than any other American power, entrusted with the responsibility for acting promptly and efficiently in any humanitarian intervention in the western hemisphere, in virtue of its own right of action under the Monroe Doctrine, which is safeguarded by the League. Thus no humanitarian intervention involving the duties of military occupa-

[61] First discussed in connection with mandates by General Smuts, in his THE LEAGUE OF NATIONS: A PRACTICAL SUGGESTION, cited by Potter, *op. cit.*, p. 565.

tion in execution of a mandate could be intrusted to any Old World power, and the United States would in all probability be asked to act. Whether, under the circumstances, new mandates of type A would result in the Caribbean area, whether humanitarian interventions in the interests of sanitation might not become necessary in different regions, it is impossible to predict, but it is safe to say that the policy of state-building, happily initiated in Cuba, and possible of accomplishment in other regions, the fulfillment of duties of a humanitarian, but also of an international police character, can be safely extended only through an acceptance on the part of the United States of the full obligations of international solidarity to which its position and its leadership in the formation of the League entitle it.

In conclusion, it is hoped that the foregoing study has sufficed to make clear the varying concepts of the nature, scope and limitations of humanitarian intervention, its relation to the structure of the community of nations, not only in respect of its legal sanction, but also of the modalities of its exercise. It would appear that the widened content of humanitarian intervention results not only from an awakened sense of international solidarity but also from the increased integration of international society, and that its exercise for the general welfare of mankind has been made possible on a new and vast scale, in keeping with the higher standards of international ethics that have been set up. Finally, its legality has been recognized through the development of new and enlightened standards of the social Law of Nations, and it is destined to become a fruitful means for securing through the international community the redressing of evils to which previous generations have been callous, indifferent, and blind.